IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

CRL.A.No. 227 of 2004()

AGAINST THE JUDGEMENT/ORDER IN CRLP.90/2004
CC.24/2003 of JUDL. MAGISTRATE OF FIRST CLASS-IV (MOBILE), TRIVANDRUM

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APPELLANT: COMPLAINANT

JIJU JACOB NINAN, S/O.NINAN MATHEW,
KADUVETTOOR HOUSE, NANTHENKODE, THIRUVANANTHAPURAM

BY ADV. SRI.S.RAJASEKHARAN NAIR
SRI.K.S.SALIM

RESPONDENTS: ACCUSED AND STATE

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1. RAMACHANDRAN NAIR, S/O. SADEASIVAN NAIR,
KARTHIKA, KOLLAMKONAM, PUNNANTHANATHU MURI,
PEYAD - P.O., THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY ADV. SRI.J.S.AJITHKUMAR
BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No.227 OF 2004

Dated this the 28th February, 2007.

J U D G M E N T

The complainant is the appellant in C.C.No.24/2003, on the file of the Judicial First Class Magistrate Court-IV, (Mobile), Thiruvananthapuram. The complaint preferred under Section 138 of the Negotiable Instruments Act was dismissed by the court below, on the ground of absence of the complainant, as well as his counsel. The accused was acquitted, after the dismissal of the complaint. After obtaining leave of this Court, this appeal is filed.

2. The grounds advanced in the appeal memorandum reveal that the date of posting was mistakenly noted by the counsel as 18.10.2003, whereas the case was actually posted on 17.10.2003. Therefore, there was no appearance on 17.10.2003. The mistake in noting the date was realised only when the complainant and the advocate appeared on 18.10.2003 before the court below. Hence, there is a prayer to have the same set aside.

3. I had heard the counsel appearing for the first respondent, accused. In the circumstances of the case, I am of the view that an opportunity be given to the parties to raise their contentions before the court below.

4. In the result, the appeal is allowed. The impugned order, dated 17.10.2003, is set aside. C.C.No.24/2003 is restored to the file of the Judicial First Class Magistrate Court-IV, (Mobile), Thiruvananthapuram.

5. The parties shall appear before the court below on 29.3.2007.

The learned Magistrate shall dispose of the matter, within three months from the date of appearance of the parties.

J.M. JAMES,
JUDGE

nj.